

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ESTHER HOFFMAN; SARAH DOUGLASS;  
ANTHONY KIM; and IL KIM and DARIA KIM,  
husband and wife and the marital community  
comprised thereof, on behalf of themselves and on  
behalf of others similarly situated,

Plaintiffs,

vs.

TRANSWORLD SYSTEMS INCORPORATED;  
PATENAUE AND FELIX, A.P.C.; MATTHEW  
CHEUNG, and the marital community comprised  
of MATTHEW CHEUNG and JANE DOE  
CHEUNG; National Collegiate Student Loan  
Trust 2004-2; National Collegiate Student Loan  
Trust 2005-2; National Collegiate Student Loan  
Trust 2005-3; National Collegiate Student Loan  
Trust 2006-1; National Collegiate Student Loan  
Trust 2006-3; National Collegiate Student Loan  
Trust 2007-4,

Defendants.

Case No. C18-1132 TSZ

PLAINTIFFS' FED. R. CIV. P. 56(d)  
MOTION FOR ORDER STRIKING  
SUMMARY JUDGMENT MOTION

NOTE ON MOTION CALENDAR:  
July 16, 2021

ORAL ARGUMENT REQUESTED

**I. INTRODUCTION AND RELIEF REQUESTED**

Pursuant to Fed. R. Civ. P. 56(d), Plaintiffs ask the Court to strike the hearing on  
Defendant Transworld System Inc.'s ("TSI's") Motion for Summary Judgment, which is noted  
for consideration on July 23, 2021. In its motion, TSI requests the Court to dismiss with

PLAINTIFFS' FED. R. CIV. P. 56(d) MOTION  
FOR ORDER STRIKING SUMMARY JUDGMENT  
MOTION - 1  
(No. C18-1132 TSZ)

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prejudice Plaintiffs' claims against it. However, discovery is still in its early stages and Defendants have delayed responding to discovery, refused to respond to other discovery, and filed motions for protective orders that remain unresolved. Defendants' actions and the current posture of the case leave Plaintiffs without much of the discovery they require to prove their case and respond to TSI's premature motion for summary judgment.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiffs filed this putative class action on June 20, 2018. Leonard Decl. ¶ 2. Plaintiffs allege that Defendants used false and misleading affidavits and/or declarations, signed under oath and/or penalty of perjury, to obtain judgments against them and thousands of other Washington consumers, in violation of both federal and state consumer protection laws. *See generally* Dkt. No. 61 (Second Amended Complaint). Plaintiffs also allege that Defendants continue to engage in this conduct, failed to give the courts that they deceived notice of their deception, and failed to vacate the judgments they obtained as a result of their deception, violating the promises they made to do so in a Consent Order TSI entered into with the Consumer Financial Protection Bureau (CFPB). *Id.* at 29, 37; *id.* Ex. A at 12-19.

While this case has been pending nearly three years and there are over 160 entries in the docket, this case is still in the infancy of discovery. Many of the 160-plus filings in the Court's docket relate to Defendants' motions to dismiss Plaintiffs claims, strike portions of Plaintiffs' pleadings, and prevent Plaintiffs from obtaining discovery. *See* Dkt. Nos. 15-54, 76-77, 92-99, 100-105, 109-119, 161-166. Plaintiffs filed their Second Amended Complaint on July 7, 2020. Dkt. No. 61. After denying Defendants' multiple motions to strike Plaintiffs' Second Amended Complaint and motions to dismiss Plaintiffs' Second Amended Complaint, on April 14, 2021 the

1 Court entered a Minute Order Setting Trial and Related Dates, including a certification discovery  
2 deadline of August 30, 2021 and a merits discovery deadline of March 10, 2022. Dkt. No. 146.

3 Plaintiffs have actively pursued discovery and Defendants have withheld documents,  
4 failed to disclose the names of witnesses, asked for extensions to respond, and moved for a  
5 protective order. Plaintiffs began discovery in earnest even before the Court's minute order was  
6 entered. Leonard Decl. ¶ 13. As detailed in the Declaration of Sam Leonard filed in support of  
7 this motion, Defendants have repeatedly failed to respond to Plaintiffs' discovery requests,  
8 requested extensions to respond, and withheld the names of witnesses with relevant information.  
9 Leonard Decl. ¶¶ 13-34, 40, 42. The NCSLT Defendants have not even provided their responses  
10 to discovery Plaintiffs propounded, and Patenaude & Felix, A.P.C. and Matthew Cheung  
11 supplied their initial responses to Plaintiffs' discovery on June 30, 2021, nearly three weeks after  
12 TSI filed its Motion for Summary Judgment. Leonard Decl. ¶ 32. TSI has a pending motion for a  
13 protective order that seeks to prevent the Plaintiffs from obtaining the very documents TSI  
14 provided the CFPB and was ordered to produce in another case. *See* Dkt. No. 156 (Motion for  
15 Protective Order), *and* Dkt. No. 163 (Response). TSI filed its Motion for Summary Judgment  
16 eight days after filing its motion for protective order and before the hearing on that motion.  
17

18 Defendants' actions have hindered the Plaintiffs' ability to locate and depose witnesses  
19 with relevant information. *See e.g.* Leonard Decl. ¶¶ 35-47. Defendants' actions have also  
20 prevented Plaintiffs from obtaining documents and other information relevant to their claims and  
21 Defendants' defenses. Leonard Decl. ¶¶ 13-47. Some of the discovery Plaintiffs seek and that  
22 TSI has moved to withhold is the very information the CFPB reviewed before finding that TSI  
23 was using false and misleading affidavits to collect on NCSLT accounts. *See* Dkt. No. 163 at 1-6.  
24 Plaintiffs believe the discovery they have requested will help prove the Defendants used false  
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1 and misleading affidavits to obtain judgments and collect on student loans, knew of the falsity  
 2 and misleading nature of the affidavits, and after being caught by the CFPB, refused to change  
 3 their practices. *See e.g.* Leonard Decl. ¶¶ 36-47. TSI’s Motion for Summary Judgment relies on  
 4 the testimony of two individuals that Plaintiffs have not even had an opportunity to depose.  
 5 Leonard Decl. ¶¶ 40-42. One of the individuals, Ralph Lyons, was not even listed as a person  
 6 with knowledge in TSI’s discovery responses. *Id.* ¶ 42. TSI and Plaintiffs have a discovery  
 7 conference set for Friday, June 9, 2021 to discuss the deficiencies in TSI’s responses. Leonard  
 8 Decl. ¶ 38. Plaintiffs’ response to TSI’s Motion for Summary Judgment is due just ten days later,  
 9 on July 19, 2021.

### 11 III. ARGUMENT

12 Rule 56(d) authorizes the Court to (1) defer consideration of a motion for summary  
 13 judgment or deny it; (2) allow additional time to conduct discovery; or (3) “issue any other  
 14 appropriate order” where a nonmovant shows “for specified reasons, it cannot present facts  
 15 essential to justify its opposition.” Fed. R. Civ. P. 56(d). In order to prevail on a request for  
 16 additional discovery under Rule 56, the nonmovant must show “(1) it has set forth in affidavit  
 17 form the specific facts it hopes to elicit from further discovery; (2) the facts sought exist; and (3)  
 18 the sought-after facts are essential to oppose summary judgment.” *InteliClear, LLC v. ETC Glob.*  
 19 *Holdings, Inc.*, 978 F.3d 653, 662 (9th Cir. 2020) (quoting *Midbrook Flowerbulbs Holland B.V.*  
 20 *v. Holland Am. Bulb Farms, Inc.*, 874 F.3d 604, 619–20 (9th Cir. 2017)). The Ninth Circuit has  
 21 instructed that, at the early stage of a case—for example prior to discovery having been  
 22 completed— District Courts are to “fairly freely” grant additional time for discovery before  
 23 ruling on a motion for summary judgment. *Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux*  
 24 *Tribes of Fort Peck Rsrv.*, 323 F.3d 767, 773 (9th Cir. 2003).

1 Here, discovery is still in its early stages. The merits discovery deadline is not until  
2 March 10, 2022. Plaintiffs have moved diligently to obtain the essential discovery they require.  
3 The facts that Plaintiffs seek to elicit supporting their claims have been withheld by the  
4 Defendants or not otherwise produced at this early stage of discovery. Plaintiffs prevail on their  
5 claims if they can show that TSI employees submitted false and misleading affidavits to obtain  
6 judgments on behalf of the NCSLTs. Plaintiffs also prevail on their claims if they can show that  
7 the NCSLTs do not have proof of assignment or chain of title showing they own the student  
8 loans upon which they, through TSI and Patenaude & Felix, A.P.C. and Mr. Cheung, seek to  
9 collect. Plaintiffs also prevail on their claims if they can show that TSI, after the CFPB caught  
10 Defendants using false and misleading affidavits to collect on NCSLT debt, failed to correct their  
11 practices and disclose Defendants' misdeeds to the courts they deceived. This is the exact  
12 information Plaintiffs seek in discovery. Plaintiffs also seek information and documents showing  
13 that the testimony TSI relies upon in support of its Motion for Summary Judgment is not reliable  
14 and is contradicted by previous testimony of the same witnesses. This discovery that has either  
15 been withheld by Defendants or not otherwise produced is essential for Plaintiffs to prevail on  
16 their claims and oppose TSI's Motion for Summary Judgment.  
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#### 19 IV. CONCLUSION

20 For the forgoing reasons Plaintiffs request the Court strike the hearing on TSI's Motion  
21 for Summary Judgment and bar them from renewing their Motion for Summary Judgment until  
22 after the discovery deadline has passed.  
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Respectfully submitted this 8th day of July 2021.

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